

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT R. DAVIES,)	CASE NO. 1:09 CV 2255
)	
Petitioner,)	JUDGE SARA LIOI
)	
v.)	
)	MEMORANDUM OF OPINION
RICHARD CORDRAY,)	AND ORDER
)	
Respondent.)	

On November 5, 2009, Robert R. Davies filed his amended petition for habeas corpus under to 28 U.S.C. § 2254 in the above-captioned case. Mr. Davies seeks to challenge his conviction in the Ashtabula Court of Common Pleas, pursuant to a guilty plea, for sexual imposition. As grounds for the petition, he asserts “the circumstances of the case did not meet the elements of the offense,” and that his counsel was ineffective.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

It is evident on the face of the petition that Mr. Davies has yet to appeal his conviction, an avenue still available to him under Ohio Appellate Rule 5. Thus, regardless of the potential merits of his claims, on which this court expresses no opinion, his petition is premature.

For the foregoing reasons, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, this action is dismissed without prejudice for failure to exhaust state court remedies pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability, Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

Dated: November 20, 2009



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE